

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT PEARSON JR.,

Plaintiff,
-against-

SERGEANT GESNER #138, et al.,

Defendants.

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DATE FILED: 5/16/2022

21 CIVIL 5670 (PMH)

JUDGMENT

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Memorandum Opinion and Order dated May 13, 2022, the motion to dismiss is GRANTED with prejudice as to Plaintiff's claims under federal law and without prejudice as to those claims Plaintiff wishes to pursue under New York State law. Although "[d]istrict courts should frequently provide leave to amend before dismissing a pro se complaint," it is "not necessary when it would be futile." Reed v. Friedman Mgmt. Corp., 541 F. Appx 40, 41 (2d Cir. 2013) (citing Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000)). This action is dismissed with prejudice to the extent outlined in the Order, and-although Plaintiff has not sought permission to do so-leave to file a Second Amended Complaint denied because any amendment would be futile. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Memorandum Opinion and Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue); accordingly, the case is closed.

Dated: New York, New York

May 16, 2022

RUBY J. KRAJICK

Clerk of Court

BY:

Xmarago
Deputy Clerk